

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

RACHEL MILLER; TEXAS DEMOCRATIC
PARTY; DNC SERVICES CORP., d/b/a
DEMOCRATIC NATIONAL COMMITTEE;
DSCC; and DCCC,

Plaintiffs,

v.

RUTH HUGHS, in her official capacity as the
Texas Secretary of State,

Defendant.

Civil Action No. 1:19-cv-01071-LY

**PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF
RESPONSE IN OPPOSITION TO SECRETARY'S MOTION TO DISMISS**

In support of their response in opposition to the Secretary's Motion to Dismiss (ECF No. 33) ("Mot. to Dismiss"), Plaintiffs respectfully submit the attached Memorandum Opinion issued on January 27, 2020 in *Democratic National Committee v. Hobbs*, No. 18-15845 (9th Cir. Jan. 27, 2020) (en banc). See Exhibit A. In *Hobbs*, the Democratic National Committee ("DNC"), DSCC, and Arizona Democratic Party were among several plaintiffs that brought suit challenging two state election laws based on injuries suffered by the Democratic Party and its voters as a result of the implementation of those laws. The Ninth Circuit found, en banc, that both challenged laws violated the Voting Rights Act ("VRA").

Although the case presently before this Court does not involve claims brought under the VRA, the decision in *Hobbs* is of relevance to the Secretary's argument that *Common Cause v. Rucho*, 139 S. Ct. 2484 (2019), renders non-justiciable cases that challenge election laws that "reflect[] partisan interests." Mot. to Dismiss at 15-16; see also Resp. In Opp. to Mot. to Dismiss

at 18-20 (ECF No. 36). One of the laws at issue in *Hobbs* was an Arizona law that prohibited collection and delivery of voted absentee ballots. The Ninth Circuit’s conclusion that the ballot collection law was unlawful repeatedly recognized that it was enacted in large part to further partisan interests. *See, e.g.*, slip op. at 23 (noting district court found Republican Party, unlike Democratic Party, had not significantly engaged in ballot collection as a get out the vote (“GOTV”) strategy, and that ballot collection had traditionally been predominately used to enable voters who were not part of Republican base to vote by absentee ballot); *id.* at 83 (same); *see also id.* at 25 (finding “Democrats and Hispanic leaders have seen reason to favor [ballot collection], Republicans have not”); *id.* at 27 (finding Republican sponsor of similar legislation was motivated at least in part “by a desire to eliminate what had become an effective Democratic GOTV strategy”).

The opinion was issued by a divided Ninth Circuit en banc court seven months to the day after the Supreme Court issued its decision in *Rucho*, however, neither the majority nor the dissents evidenced any concern that the challenge to the law was nonjusticiable because it “reflect[ed]” (or in that case, was demonstrably meant to further) “partisan interests.” Mot. to Dismiss at 16. The partisan motivation for and ramifications of the law were simply another feature of the law, that in no way hindered the court’s ability to evaluate and decide the partisan plaintiffs’ claims on the merits.

Dated: January 29, 2020.

Respectfully submitted,

/s/ *Skyler M. Howton*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 29, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ *Skyler M. Howton*